

STATE NATIONAL BANK OF EL PASO, TEXAS, TRUSTEE

IBLA 72-374

Decided August 16, 1973

Appeal from decision by the New Mexico State Office, Bureau of Land Management, denying a partial assignment of an oil and gas lease, LC 063928(b), and rejecting application for a ten-year renewal of the lease as to the land described in the partial assignment.

Affirmed in part, reversed in part.

Oil and Gas Leases: Unit and Cooperative Agreements -- Oil and Gas Leases: Twenty-year
Leases

Elimination of a portion of a lease committed to a producing unit plan from that unit does not cause or permit a segregation of the eliminated portion into a new and distinct lease. The eliminated portion of the lease and the portion which remains unitized continue to form one lease. The term of the eliminated portion continues coextensively with the term of the portion still committed to the unit plan.

Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(j) (1970), contains no authority for the Department to segregate a unitized lease into separate leases upon its partial elimination from a unit plan by reason of contraction of the unit area.

APPEARANCES: John B. Luscombe, Jr., Esq., of Peticolas, Luscombe, Stephens and Windle, El Paso, Texas, for appellant.

OPINION BY MR. FISHMAN

The State National Bank of El Paso, Texas, Trustee, has appealed from a decision of the New Mexico State Office, Bureau

of Land Management, dated March 20, 1972. The decision denied approval of a partial assignment of an oil and gas lease, and rejected an application for a ten-year renewal of a lease as to the lands described in the partial assignment application.

As noted in the State Office decision, a ten-year renewal of a 20-year oil and gas lease was issued to Shell Oil Company on December 1, 1959. The renewal lease covered 320 acres of land in Eddy County, New Mexico, described as the SW 1/4 sec. 13 and the NE 1/4 sec. 14, T. 16 S., R. 30 E., N.M.P.M., New Mexico.

Thereafter the lease in issue, LC 063928(b), was committed to the Henshaw Deep Unit Agreement No. 14-08-001-6453. On April 23, 1966, the N 1/2 SW 1/4 and SW 1/4 SW 1/4 sec. 13, and the NE 1/4 sec. 14 were eliminated from the unit by contraction. The SE 1/4 SW 1/4 sec. 13 remained committed to the unit agreement.

On August 28, 1969, appellant filed in the State Office a partial record title assignment of lease LC 063928(b) from Shell Oil Company to the State National Bank of El Paso, Texas, Trustee. Appellant also filed in the State Office an application for a ten-year renewal of that portion of the lease eliminated from the unit. Both documents described the lands which were eliminated from the unit agreement.

Appellant contends that the Bureau of Land Management erred in not approving the partial assignment and in rejecting appellant's application for a ten-year renewal lease as to the assigned portion (the non-unitized portion).

Where a lease is partially eliminated from a unit plan by contraction, the Department has no authority to create separate leases from the portion which remains in the unit and the portion which is eliminated from the unit. Continental Oil Company, 70 I.D. 473 (1963); Solicitor's Opinion, M-36592 (January 21, 1960); Solicitor's Opinion, M-36518 (January 29, 1958); Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(j) (1970). Therefore, when a portion of the lease in issue was eliminated from the Henshaw Deep Unit by contraction on April 23, 1966, the eliminated portion of the lease and the portion which remained unitized continued to be one lease.

However, separate leases would result upon the approval of a partial assignment covering the non-unitized portion. If the partial assignment had been properly and timely filed, it would have been effective as of October 1, 1969. The new lease of the non-unitized portion, not being in a unit at the end of its term, would have been eligible for a ten-year renewal. Omaha National Bank, 11 IBLA 174 (1973).

Since the partial assignment was not completed prior to the expiration of the lease term on November 30, 1969, the lease existed as an entirety on that date as a continuation of a 20-year lease committed in part to a unit plan. It did not expire but was continued in force as a continuation of a 20-year lease committed in part to a unit plan. Omaha National Bank, supra.

The Department has held that a lease which is in a unit on the expiration date of its term, has no right to a ten-year renewal. Texaco, Inc., 76 I.D. 196 (1969); Omaha National Bank, supra. However, since no application for a 10-year renewal of the entire lease was filed, the question of whether such a lease is entitled to a 10-year renewal is not before us. 1/

Appellant next argues that the Bureau erred in denying a partial assignment of the lease in question. We agree with appellant. The Bureau denied approval of the partial assignment because the requisite documents were not filed by appellant prior to December 1, 1969. This action was taken by the Bureau on the basis that December 1, 1969, was the date that the renewal lease, if issued, would have become effective. The proposed lease of the assigned portion was not eligible for a ten-year renewal for the reasons stated above. However, the undivided lease continued as an entirety by virtue of its partial commitment to the unit.

Appellant was granted an extension of time by the Bureau to file the necessary documents for approval of the requested assignment. The case file indicates that appellant has now filed these documents. Since the lease has not terminated, appellant is

1/ Under the doctrine of Texaco, Inc., supra, a 20-year lease, or any renewal thereof, which is subject to an approved unit agreement at the expiration of its primary term cannot be renewed for successive 10-year periods. Accord, Anne Burnett Tandy, 7 IBLA 356 (1972); Martin Yates III, 7 IBLA 261 (1972).

entitled to the requested assignment if appellant otherwise qualifies under the departmental regulations. The assignment, if approved, would take effect as of the first day of the month following the date all the requisite documents were filed. 43 CFR 3106.3-3.

In all fairness to appellant, we wish to point out the consequences of approval of the assignment at this time. Such an approval would segregate the non-unitized portion into a separate lease and it would continue only for two years from the date of approval of the assignment, absent production. Contrariwise, retaining the status quo would continue the non-unitized portion for the life of the unit and for two years thereafter and so long thereafter as oil or gas is produced in paying quantities. Continental Oil Company, supra.

Therefore, pursuant to the authority delegated by the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed to the extent it denied a ten-year renewal of the assigned portion of the lease in question, and it is reversed to the extent it denied a partial assignment of the lease. The case is remanded to the Bureau of Land Management for further consideration of appellant's request for a partial assignment.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Edward W. Stuebing, Member

